

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

YOLANDRA SMITH

Plaintiff,

V.

FOUNDATION CARE LLC

Defendant

CASE #: 4:16 CV-01224 JCH

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT TO CONFORM TO THE EVIDENCE**

COMES NOW, Plaintiff, Yolandra Smith, by and through her undersigned counsel and her Motion for Leave to Amend her Complaint to Conform to the Evidence, in support of same Plaintiff states to the Court as follows:

1. Plaintiff seeks leave to amend her initial complaint to conform to the evidence involving the cause.
2. Plaintiff seeks said leave in good faith and in the interest of justice that Plaintiff will have the opportunity to fairly and fully present her matter to the Court.
3. Plaintiff, filed her initial Complaint; The initial complaint regarding Plaintiff effort to receive earned and accrued pay was lacking and stimulated concern by Defendant.
4. This counsel files Plaintiff's Motion for Leave to Amend the Plaintiff's Original Complaint.

5. Nither party(s) involved in this matter will be prejudiced nor inconvenienced by said Leave, as nither party(s) have completed discovery, performed any depositions and the Court has not submitted its case management order nor Rule 16 Order, in this matter.
6. Rule 15(a) of the federal Rules of civil Procedure states in pertinent part that leave to amend should be “freely given when justice so requires”. In fact, Courts have the authority to grant Leave to Amend ostensibly during each phase of litigation, even on remand after appeal. Columbia V. Paul N. Howard Co., 707 F. 2d 338 (8<sup>th</sup> Cir); 464 U.S. 893, 78 L.Ed. 2d 229, 104 S. Ct. 238.
7. There is no precise delineation of when an amendment will be allowed as the grant or denial of leave to amend is a matter that is within the discretion of the trial Court. Zenith Radio Corp., V. Hazeltine Research, Inc. 91 S.Ct. 795, 401 U.S. 321; Foman V. Davis, 83 S.Ct. 227, 371 U.S. 178 Kaufman V. Sheehan, 707 F. 2d 355 (8<sup>th</sup> Cir.1983); Russ V. Ratliff, 578 F. 2d 221,224 (8<sup>th</sup> Cir. 1978) citing 99 S.Ct. 614, 439 U.S. 1003

WHEREFORE, these reasons, Plaintiff prays the Court grant said Leave and any other and further relief this court determines to be just and proper.

Respectfully submitted,

LAW OFFICE OF JAMES ROBINSON LLC

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Attorney for Plaintiff Yolandra Smith

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this this 27<sup>th</sup> day of September, 2016, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

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